

sca545098j

.FO 1

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5450 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes

J

3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

-----  
DY EXECUTIVE ENGINEER

Versus

DINUBHAI @ DILIPKUMAR NATVARSINH RAULJI

-----  
Appearance:

Mr. V.B.Gerania, A.G.P. for Petitioner

-----  
CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 14/07/98

ORAL JUDGEMENT

The State of Gujarat through Deputy Executive Engineer, Panam Rehabilitation Sub-Division has filed the present petition to challenge the award passed by the

Labour Court Godhra on 26.5.1997. The respondent had raised an industrial dispute contending therein that he had worked with the present petitioner between 8.7.81 and 30.8.86 and that he had completed more than 240 days of services in a year. But inspite of this his services were terminated without following the procedure prescribed by section 25-F of the Industrial, Disputes Act. It was also further contended by him that junior persons who had joined in service after him were retained in service and the principle of last come first go was not followed by the petitioner. The Labour Court found favour with that contention and directed the petitioner to reinstate the respondent in his original post held by him without any back wages. Said award is being challenged by filing the present petition. Mr. Gerania learned Assistant Government Pleader vehemently urged before me that the Labour Court was not at all justified in holding that the respondent oworkman had completed 240 days of service in a year. He contended that the statement given in the judgment by the Labour Court in para 9 itself clearly shows that the respondent had not completed 240 days in a calendar year. Therefore, when the respondent had not completed 240 days service in a year, there was no question of following the procedure laid down in section 25-F of the I.D.Act. he further contended that the respondent was also appointed as a daily wager and not in a regular vacancy and therefore, also he ought not to have reinstated in service.

2. The submission of Mr. Gerania that the workman must complete 240 days in a calendar year is not correct. What the law expects is that the workman must complete 240 days in an year i.e. in a period of 12 months. If the submission of Mr. Gerania and the statement given in para 9 of the judgment are considered, then it would be quite clear that between 8.7.81 and 14.6.82 the workman in question has completed 245 days. Therefore, the statement itself clearly shows that the workman had completed more than 240 days in a years. It must be also further mentioned here that admittedly the procedure laid down under section 25-F of the I.D.Act is not followed. When the procedure laid down in section 25-F of the I.D.Act is not followed, then the termination of services of the respondent will amount to retrenchment. In the case of Ratan Singh vs. Union of India 1997 (2) SCC 396 it has been held by the Apex Court that termination of services even of a daily rated workman without following the procedure laid down in 25-F would be illegal and amounts to retrenchment and he is entitled to reinstatement. Therefore, in view of the facts which have been recorded by the Labour Court on the

appreciation of evidence, present petition could not be entertained. The finding of facts recorded by the Labour Court could not be said to be either perverse or grossly erroneous so as to interfere with the same in exercise of the discretionary powers under Articles 226/227 of the Constitution of India. Therefore, there is no substance in this petition and therefore, the same deserves to be rejected summarily. Accordingly the petition is summarily rejected. No order as to costs.

(S.D.Pandit.J)